IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.20/2006

Date of Decision :10.5.2007.

State of H.P. and Ors. …Petitioners.

Versus:

Bir Singh and another. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioners: Mr.C.B.Singh, Advocate.

For Respondent-1. Mr.Vikas Rathore, Advocate.

Sanjay Karol, J (Oral).

The petitioner has assailed the award dated 1.4.2005 passed in Reference No. 382/2002 (RBT No.123/04). The respondent was appointed as part-time Safai Karamchari in Ayurvedic Dispensary, Salehra by the Gram Panchayat on 24th January, 1997. The resolution of the Gram Panchayat (Annexure:A-II) appointing him as part-time Safai Karamchari is reproduced as under:

> "COPY OF RESOLUTION NO.3 APPROVED BY THE PANCHAYAT MEETING HELD ON 24.1.1997 UNDER THE CHAIRPERSONSHIP OF PRESIDENT SMT. NIRMALA DEVI.
> PRESENT 8/9+1=9/9

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Subject Appointment of Part time worker in Ayurvedic Dispensary Salehra.

That the above named dispensary is going to start its functioning w.e.f. 27.1.1997 Govt. orders have been received. For the cleanness of this dispensary Sh. Neki Ram Ward Panch has proposed that Sh. Bir Singh S/o Shri Gian Chand R/V Salehra may be temporarily adjusted for this work from our own resources. This appointment shall be valid till the next arrangement by the Government.

Certified that the resolution copy is in accordance with the original resolution."

The services of the respondent were dispensed with. The respondent alleged that his services were wrongly terminated and raised an industrial dispute which was referred under Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as `the Act') to the Labour Court-cum-Industrial Tribunal, Dharamshala for adjudication. The reference of the Government is reproduced as under:

"Whether the termination of the services of Sh. Vir Singh S/o Shri Gian Singh w.e.f. 2.4.1998 by Distt. Ayurvedic Officer, Kangra at Dharamshala, is proper and justified? If not, what relief of service benefits the above workman is entitled to?"

The reference has been answered holding that the petitioner was a Government employee and, therefore, his services could not have been terminated without compliance of the provisions of Section 25-F of the Act.

It is undisputed that the respondent worked as a part-time Safai Karamchari only w.e.f. 27th January, 1997 till 1st March, 1998. It is not in dispute that the Ayurvedic Dispensary was taken over by the Government. In the claim petition, the petitioner has himself admitted that he was appointed by the Gram Panchayat. A perusal of the Resolution passed by the Gram

Panchayat appointing him as part-time Safai Karamchari makes it abundantly clear that his appointment is temporary in nature, payment is to be made by the Gram Panchayat alone and the appointment is valid till such time an alternate arrangement has been made by the Government.

In this view of the matter, it cannot be stated that the respondent was an employee of the State and the State was required to comply of the provisions of Section 25-F of `the Act'. In any event, he would not be a workman so as to fall within the ambit and scope of `the Act'. In this view of the matter the impugned award dated 1st April, 2005 is set aside.

Keeping in view the facts and circumstances of the case, since the respondent had actually worked as part-time Safai Karamchari for almost a period of one year, the respondent is directed to consider giving him suitable employment in accordance with law. The learned counsel for the respondent submits that he would be ready and willing to join even as part-time employee anywhere in Mandi/Kangra. While taking decision, the petitioners shall consider all facts sympathetically. The writ petition is accordingly disposed of.

(Sanjay Karol),
Judge.

May 10, 2007(R)